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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-64
6 Gillespie Road
Charlton, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Charlton Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by Mondo's Lounge. (hereinafter referred to as the "Appellant"). The building, which is the subject of the order, is located at 6 Gillespie Road, Charlton, MA.

B) Procedural History

By written notice dated May 16, 2005, the Charlton Fire Department issued an Order of Notice to the Appellant informing it of the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 6 Gillespie Road, Charlton, MA. The Appellant filed an appeal of said order on June 30, 2005. The Board held a hearing relative to this appeal on January 11, 2006, at the Department of Fire Services, Stow, Massachusetts.

The Appellant was represented by Elizabeth Ianniccheri, owner, Mondo's Lounge. The Charlton Fire Department was represented by Chief Ralph W. Harris, Sr. Charlton Building Commissioner Curtis J. Meskus was also in attendance.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Stephen D. Coan, State Fire Marshal, Chief Thomas Coulombe, Alexander MacLeod, and Peter E. Gibbons. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Charlton Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal by Appellant
2. Drawing of Interior of Facility
3. Order of Charlton Fire Department
4. Notice of Hearing to Appellant
5. Notice of hearing to Charlton Fire Department
6. Certificate of Inspection
7. Photographs (7A-7F)

E) Subsidiary Findings of Fact

- 1) By Notice dated May 16, 2005 the Charlton Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 6 Gillespie Road, Charlton, MA. in accordance with the provisions of M.G.L. c. 148, s.26G1/2. The Appellant timely filed an appeal of said order on June 30, 2005. After appropriate notice, the Board held a hearing relative to this appeal on January 11, 2006, at the Department of Fire Services, Stow, Massachusetts.
- 2) According to the Certificate of Inspection dated November 22, 2005, the building is a 2 story wood frame occupied by a bar on the first floor and a residence on the second floor. The listed use group classification is "A-2" for the bar portion and the occupancy is 166 persons.
- 3) According to pictures presented by the Appellant, the facility is used and advertised as a bar. The facility features sit down booths for patrons, as well as a bar with stools. There are two pool tables, a foosball table, ping-pong table, jukebox, lottery ticket dispensing machine and two television sets within the facility.
- 4) The Appellant testified that they hold a common victualer's license for the sale of alcohol from Monday to Saturday, 8 a.m. to 1 a.m., and on Sunday from 12:00 p.m. to 1:00 a.m.
- 5) The Chief testified that there is clearly a bar atmosphere at this facility, that there is typically low lighting, and a high occupancy load. The pictures submitted by the Appellant supports the Chief's testimony, as there are also alcohol and beer signs that promote the consumption of alcoholic beverages throughout the interior of the establishment and also several such signs exist on the exterior of the building.

- 6) The Appellant contends that the establishment is neither a nightclub nor a function facility and that the facility is not capable of holding over 100 persons.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The subject building is considered a public assembly with a capacity of 100 persons or more.
- 2) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 3) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 4) In previous determinations and in an advisory memorandum dated January 10, 2005 this Board has established certain factors, which it will consider in determining if an establishment features characteristics that are typical of the type of facilities within the scope of the enhanced sprinkler requirements of M.G.L. c. 148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. Thus far this board has applied those factors that are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) to determine if an establishment presents characteristics of a “nightclub, dance hall or discotheque. In such case the Board will consider such factors as:
 - a) No theatrical stage accessories other than raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;
 - g) Service facilities primarily for alcoholic beverages with limited food service; and
 - h) High occupant load density.

This list of characteristics is not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building. It is noted that the list of the “A-2 like characteristics”, as determined by this Board applied to nightclubs, dancehall and discotheques.

Some of these particular characteristics, such as low lighting, entertainment by a live band or recorded music generating above normal sound levels and a specific area designated dancing, may not necessarily exist in certain establishments that clearly may be considered a “bar”. Nevertheless, the provisions of M.G.L. clearly apply to “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a...**bar**...”.

- 5) The building at issue clearly has the characteristics of a “bar” such as :
- a. Full liquor license which allows the service of “ all kinds of alcoholic beverages”
 - b. Classification as a “bar ” and being classified as an “A-2” classification on the Certificate of Inspection
 - c. The existence of a bar, and bar seating or bar standing and a bartender for the purposes of serving alcoholic beverages to patrons
 - d. The establishment does not provide full food service on a routine basis
 - e. Later than average operating hours as evidenced by the establishment’s liquor license, which allows the establishment to conduct business until 1:00 am, seven (7) days a week
 - f. The establishment features activities, atmosphere and a décor, which makes a customer reasonably, expect “bar-like” accommodations. Examples of such features in this establishment include a “jukebox”, pool tables, ping-pong table, cribbage, lottery ticket machine and several televisions for sports and entertainment viewing purposes. Additionally, there are several lights, signs and commercial ornaments promoting alcoholic beverages. Such items appear within and outside the building.

G) DECISION AND ORDER

After a careful review of all the evidence presented and based upon the aforementioned findings and reasoning, the Board hereby determines that the building located at 6 Gillespie Road, Charlton, MA. is a public assembly with a legal capacity of 100 or more persons and is currently used or designed as a “bar”. Accordingly, the Order of the Charlton Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2 is hereby affirmed. An adequate sprinkler system shall be installed in accordance with statutory timeline as follows:

1. The submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006); and
2. Complete installation within 3 years of the effective date of the act (by November 15, 2007).

H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Paul Donga	In favor
Stephen D. Coan, State Fire Marshal	In favor
Thomas Coulombe	In favor
Alexander MacLeod	In favor
Peter E. Gibbons	In favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E.. Chairman

Dated: January 26, 2006

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO: Ms. Elizabeth Ianniccheri, P.O. Box 276, Charlton City, Massachusetts 01508 by **1st CLASS MAIL, POSTAGE PRE-PAID, TO:** Chief Ralph W. Harris, Sr., Charlton Fire Department, P.O. Box 114, Charlton City, Massachusetts 01508.